IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 16273 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KISHORBHAI VISHRAMBHAI BAMBHANI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 16273 of 2003

MR KIRTIDEV R DAVE for Petitioner No. 1

MR SN SHELAT, A.G. with MS MAITHILI MEHTA, A.G.P for Respondent No. 1,3

MR NIKHILESH J SHAH for Respondent No. 2

NOTICE SERVED BY DS for Respondent No. 4-5

CORAM : HON'BLE MR.JUSTICE A.R.DAVE

Date of decision: 12/07/2004

ORAL JUDGEMENT

1. Tshe petitioner, a resident of Anjar city, has been aggrieved by reconstitution of his plot under Anjar Town Planning Scheme No. 4. He has approached this Court with a prayer that he should be allotted his Final Plot at a place, where his original plot was situated.

2. The facts giving rise to the present petition, in a nutshell, are as under:

2.1. The petitioner was an owner of original plot no. 476. As a result of Town Planning Scheme no. 4, the petitioner has been now allotted Final Plot No. 476, which is a little away from his original plot. The original plot admeasured 85.83 sq meters whereas the Final Plot admeasures 72.10 sq meters. The petitioner is suffering loss of land to the extent of 12.73 sq meters as a result of the scheme.

3. Of course, it has been very fairly submitted by the learned advocate appearing for the petitioner that the petitioner is not aggrieved by the deduction in land suffered by him as he is to be compensated in respect of the said loss in terms of money but he is aggrieved because he has been shifted to a different place. Learned advocate Shri K.R. Dave appearing for the petitioner has submitted that only with an intention to do some undue favour to respondents nos. 4 & 5, the petitioner has been allotted the Final Plot at a distant place, whereas his original plot has been allotted to another person.

4. It has been submitted by him that the petitioner had made a representation to the Mamlatdar, Anjar on 30th July, 2001 stating that he wanted to remain at the place, where his original plot is situated. He had thereafter made a representation to respondent no. 2 on 26th September, 2001 stating that he was objecting to allotment of a Final Plot at a distant place. In spite of the aforestated objections filed by the petitioner, the petitioner was given the Final Plot at a distant place.

5. It has been submitted by the learned advocate appearing for the petitioner that the petitioner should be allotted his final plot at the place, where he was having his original plot.

6. In pursuance of notice issued by this Court, learned Advocate General Shri S.N. Shelat, with learned A.G.P. Ms Maithili Mehta, has appeared for respondents

nos. 1 & 3 whereas learned advocate Shri N.J. Shah has appeared for respondent no. 2. Though served, nobody has appeared for respondents nos. 4 & 5.

7. It has been submitted by the learned advocates appearing for the respondents that as a result of implementation of the scheme, some changes are invariably made. It has been submitted that as a result of implementation of the scheme, in the process of reconstitution of plots, the petitioner has been allotted Final Plot No. 476 at a different place because it was not possible to accommodate the petitioner at the place where his original plot is situated.

8. It has been submitted on behalf of the respondents that the petitioner did not file any objection, when the draft scheme had been published. It has been submitted that declaration of the intention to make a draft town planning scheme was made on 4th May, 2002 whereas on 27th May, 2002, upon publication of the draft town planning scheme, objections were invited from the concerned persons, but in pursuance of the said publication, the petitioner did not submit any objection. It has been further submitted that the preliminary town planning scheme had been sanctioned by respondent no. 1 on 21st January, 2003 and as it has become final, it is not possible to make any change therein.

9. Denying the allegations of mala fide, it has been submitted by the learned advocates for the respondents that in the process of implementation of the scheme, the original plots and the final plots do not remain the same and, therefore, invariably people have a feeling that they have been given plots with different boundaries or at different places only with an intention to see that somebody is favoured. It has been submitted by the learned advocates that such a feeling does not have any legal basis because in the process of planning, original plots and final plots do not remain the same.

10. In the circumstances, it has been submitted by the learned advocates appearing for the respondents that in spite of all possible efforts made by them they could not please all the residents of Anjar equally.

11. It has been submitted that in fact the petitioner has been given a plot, which is closer to the heart of the city and, therefore, the petitioner should not make a grievance.

12. I have heard the learned advocates and have also

perused the record and relevant maps annexed to the affidavit.

13. Sofar as the representations, which were made by the petitioner are concerned, for the first time, the petitioner had made a statement before the Mamlatdar, Anjar on 30th July, 2001 to the effect that he wanted to remain at the place where his original plot is situated. The said statement was made in relation to getting financial aid as the petitioner's building had been destroyed as a result of the earthquake. In the said statement, which is at Annexure-C to the petition, the petitioner had assured the authority that he would construct his building in a particular manner and shall use the amount given to him for the purpose of construction of the house. Thus, it is clear that the said letter was written to the Mamlatdar in relation to financial aid, which he was to get from the government and the said letter had nothing to do with the draft town planning scheme.

14. Thereafter, the petitioner had written a letter on 26th September, 2001 to respondent no. 2 stating that he was not inclined to take the Final Plot at a distant place because he wanted to do business at the same place. It is pertinent to note that in his letter dated 26th September, 2001, the petitioner had stated that he was not inclined to go outside the limit of Anjar city. In fact, he has not been shifted outside Anjar as the Final Plot is situated very much within the Anjar City.

15. It is pertinent to note that the petitioner had remained present before the Town Planning Officer on 6th September, 2002 and had given his statement in writing, wherein he did not object to allotment of Final Plot at a different place, but he was aggrieved because the amount to be contributed by him was excessive. If it is so, the petitioner can ventilate his grievance before an appropriate forum so that the quantum of contribution to be given by the petitioner can be reconsidered by the authority appointed under the provisions of Gujarat Town Planning and Urban Development Act, 1976.

16. Upon perusal of the relevant record of the area where the petitioner was having his original plot, it is found that hardly 15 persons got their Final Plots at the place, where their original plots were situated. It is true that the petitioner has been shifted to a different place, but it appears that he has been shifted nearer to the heart of the city. A person may not like to go to a different place because of the attachment, which he is

having with his place, but in the process of planning, very often the concerned authority may have to shift the original plot holders, and in the said process, the petitioner has also been shifted to a different place.

17. Upon perusal of the record and upon hearing the learned advocates, I do not find that the respondent authorities have acted in an arbitrary manner or with mala fide intention. No legal or fundamental right guaranteed to the petitioner has been violated. If the petitioner feels that he has to contribute more amount, he can ventilate his grievance before an appropriate forum. I am sure that in such an event, the concerned authority shall look into the matter and do the needful to redress his grievance, if any injustice has been caused to him.

18. For the aforestated reasons, the petition is rejected. Notice is discharged.

(A.R. DAVE, J.)

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